

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3717 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 TO 5 NO

DINESHBHAI ISHWARBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
MR BD DESAI AGP for State

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/10/97

ORAL JUDGEMENT

Petitioner appeared before the Selection Committee of the respondent-Authorities for appointment on the post of Assistant Teacher {Physical Education}. The grievance of the petitioner is that his name has not

appeared in the merit list even though he has secured higher marks in the merit. Petitioner has indicated merit of the candidates in a tabular form in para-6 of the petition, which is reproduced as follows :-

UNRESERVED MERIT

- (1) Kripalsingh Ajitsingh Zala 19.810
- (2) Bhikhabhai Nathabhai Prajapati 18.545

SCHEDULED TRIBE

- (1) Narendra Punaji Kharadi 18.281

BAXI PANCH (OBC)

- (1) Bharat Bababhai Chaudhary 22.708
- (2) Jagdishbhai Ranchodbhai Gosai 22.043
- (3) Devabhai Sendhabhai Desai 19.888

PETITIONER

- (1) Dineshbhai Ishwarbhai Desai 19.680

The say of the petitioner is that inspite of the fact that he has secured higher marks than the candidates from the general category, his merit has been assessed only within the zone of the reserved category of OBC, therefore, he contended that a person of higher merit cannot be elbowed out only on the ground that he belongs to a reserved category. It is also submitted that the reservations are made for the purpose of upliftment of the educationally and socially backward classes and not to their detriment. The learned counsell for petitioner also invited my attention to a Resolution of the Government dated 4th May, 1994 {Annexure "D" at page-80}.

It is evident from the tabular form that while petitioner's merit is 19.680, the merit of Bhikhabhai Nathabhai Prajapati who belongs to OBC, shown in as Unreserved Category is of the merit of 18.545. The said Bhikhabhai Nathabhai Prajapati has been selected in preference of the petitioner only on the ground that three persons from OBC have already been selected under the OBC - Reserved Category and though the petitioner is of the higher merit, he cannot find place under the Unreserved category. In my view, the view taken by the respondent is erroneous. The petitioner is admittedly on the higher merit, therefore, a person of higher merits can not be elbowed out only for the reasons that he belong to OBC. In this regard, a Resolution of the

Government dated 4th May, 1994 is also very clear.
Para-2 of the said resolution reads as under :-

"According to the amendment, in para-3 by the Resolution of the above Department dated 23-2-1994, those candidates of Socially & Educationally backward classes, who are eligible for the seats, should be considered in the class of unreserved candidates and not in the class of reserved candidates, for that class from now, the given 27% reservation will only be given and that too on the merit basis."

In the result, this Special Civil Application is allowed. Respondents are directed to consider the case of petitioner for the post of Assistant Teacher {Physical Education}. In case petitioner is appointed, he will be given all the benefits i.e., of seniority, etc. as if he was appointed higher in rank than Bhikhabhai Nathabhai Prajapati. However, petitioner will not be entitled to salary and allowance for the period. Rule made absolute to the aforesaid extent. No order as to costs.

Prakash*